

19. 28.03.2022
BD Ct.15

W.P.A. 95 of 2017

Ashish Kumar Ponda

-vs-

The State of West Bengal & Ors.

Mr. Shyamal Kumar Das

Mr. Ajoy Barman Roy

... for the petitioner.

Mr. Swapan Kumar Dutta

Mr. Dipankar Das Gupta

... for the State

Mr. N.C.Bihani

Mrs. Papiya Banerjee Bihani

Mr. Soumyajit Ghosh

Mr. Soumya Mukherjee

Mr. Kshitij Singh

... for the DSDA.

Petitioner's father was working in the post of Collection Sarkar and he was suffering from cancer at the material point of time which prompted the Executive Officer of Digha Sankarpur Development Authority and Special Officer, Urban Development (T & CP) Department by issuing the memo dated 2nd April, 2014 to allow the petitioner's father to retire prematurely since he has been declared permanently incapacitated on medical ground by the Zonal Medical Board of Bankura Sammilani Medical College.

Mr. Shyamal Kumar Das, learned advocate representing the petitioner has submitted that the petitioner is the son of the said employee of Digha Sankarpur Development Authority and he has approached the concerned respondent authorities

for his appointment on compassionate ground since his father has been declared medically incapacitated and was permitted to retire prematurely as it has been alluded above. Subsequently the issue was decided by the Joint Secretary to the Government of West Bengal, Urban Development Department whereby issuing a Memo dated 31st August, 2016 the respondent no. 2 refused to appoint the petitioner on compassionate ground based on observation of the Finance Department which has been quoted in the memo, at page 33 of the writ petition. By such memo dated 31st August, 2016, the respondent no. 2 disclosed the observation of the Finance Department to the extent that premature retirement can be allowed by the appointing authority and not by head of office and on that score memo dated 2nd April, 2014 by which petitioner's father was permitted to retire prematurely was questioned. The said memo dated 31st August, 2016 issued by the respondent no. 2, is under challenge in this present writ petition.

Mr. N.C.Bihani, learned advocate, appears on behalf of Digha Sankarpur Development Authority and submits that on behalf of the said Authority communications were made to the concerned authorities under Urban Development Department with regard to premature retirement of the father of the writ petitioner and issue relating to appointment of the petitioner on compassionate ground which subsequently was negated vide impugned memo dated 31st August, 2016. It has further been submitted that in view of such rejection Memo dated 31st August, 2016 the

concerned authorities of Digha Sankarpur Development Authority could not process the application of the petitioner for appointment on compassionate ground.

Mr. Swapan Kumar Datta, learned Additional Government Pleader appears on behalf of the State respondents and files affidavit affirmed on 14th March, 2022 which is taken on record, wherein by drawing attention of this Court to paragraph 9 of the said affidavit it has been submitted that compassionate appointment in the present case can only be allowed if the Finance Department reverts its earlier observation and holds in favour of the petitioner and accordingly leave has been prayed for to revisit the issue by the concerned authority of the State Government on grant of compassionate appointment in favour of the petitioner.

This Court has considered the submissions made on behalf of the parties and perused the relevant documents including pleadings available on record.

It appears that vide memo dated 2nd April, 2014 father of the petitioner who was an employee of Digha Sankarpur Development Authority was permitted to retire prematurely on medical ground since he was suffering from cancer based on the medical report furnished by the competent Zonal Medical Board.

Question crops up in this writ petition is

whether in view of permitting the father of the petitioner to retire prematurely on medical ground the petitioner being his son is entitled to get the benefit of compassionate appointment which has been refused vide impugned memo dated 31st August, 2016 by the respondent no. 2. The stand has been taken on behalf of Digha Sankarpur Development Authority that they initiated the process for appointment of the petitioner on compassionate ground which was stalled in view of the Memo dated 31st August, 2016 issued by the respondent no. 2.

Today, in view of the affidavit filed on behalf of the State respondents and in consideration of the pleadings specifically made in paragraph 9 of such affidavit it appears virtually the State respondents have prayed for leave to revisit the issue relating to appointment of petitioner on compassionate ground.

In view of such stand being taken as emanates from the affidavit in opposition filed on behalf of the State respondents this Court sets aside the impugned memo dated 31st August, 2016 whereby claim of the petitioner for appointment on compassionate ground was spurned and directs the concerned authority being the Joint Secretary to the Government of West Bengal, Urban Development Department, respondent no. 2, to take a decision on the claim of the petitioner for appointment on compassionate ground afresh after granting opportunity of hearing to the petitioner as well as representative of Digha Sankarpur

Development Authority and pass a reasoned order within a period of twelve (12) weeks from the date of communication of this order. The decision to be taken by the respondent no. 2 shall be communicated to the petitioner as well as Digha Sankarpur Development Authority within one week thereafter.

With the above direction the writ petition stands disposed of. However, there shall be no order as to costs.

Urgent Photostat certified copy of the order, if applied for, be given to the parties, upon usual undertakings.

(Saugata Bhattacharyya, J.)